IN THE HIGH COURT OF JUDICATURE OF BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.243 OF 2005

Shabana Abdul Shaikh ... Applicant

versus

The State of Maharashtra ... Respondent

...

Mr. R.D. Suryawanshi, for the Applicant.

Mr. K.V. Saste, A.P.P., for the Respondent.

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CORAM : A.M.KHANWILKAR,J.

1st February 2005

P.C.:

. Heard Counsel for the parties. Perused the record. The Applicant has been arrested in connection with offence punishable under sections 8(C), 21 and 22 of the N.D.P.S. Act in connection with recovery of some bags and gunny bags and suit cases containing 70 kgs. 500 gms. ganja, worth Rs. 70,300/- from her house. The case of the Applicant is that the ganja, which has been recovered is not from her house, but her

step-mother-in-law's house, which is incidentally in the same locality. It is then contended that in any case the Applicant was not in her house when the raid was conducted. It is submitted that the panchnama makes no reference from where the offending ganja has been recovered. On this basis, it is contended that there is no evidence regarding possession, much less conscious possession of the Applicant. There is no substance in the submissions as canvassed before this Court. The Applicant is right to the extent that the panchnama makes no reference of the house number, from where the ganja was recovered during the raid. However, this submission overlooks the evidence in the nature of statements of neighbouring witnesses, recorded by the investigating officer, which clearly suggest that the ganja was recovered from the house of the Applicant. In other words, for the time being, it is not possible to accept the plea of the Applicant that the ganja was recovered from the house of her step-mother-in-law and not her house. That will be matter for trial. Counsel for the Applicant placed reliance on the decision of the Apex Court reported in 2004 SCC (Cri) 1561

in the case of Narcotics Control Bureau, Jodhpur v. Murlidhar Soni and others. The fact situation of that case is entirely different. Besides, the finding reached by the Court was after a fullfledged trial. For the time being, as mentioned earlier, the evidence as collected by the prosecution in the present case will have to be accepted as it is; and if so understood, it is not possible to take the view that there is reason to believe that the Applicant is not guilty of the alleged offence. Reliance was also placed on the decision of the Apex Court reported in 2002 ALL MR (Cri) 2564 (SC) in the case of Avtar Singh and ors. v. State of Punjab, to contend that as there is no evidence regarding possession, much less conscious possession, the Applicant deserves to be enlarged on bail. This submission clearly overlooks that, in the present case, 70 kgs. of ganja has been recovered from the house of the Applicant. It is not the Applicant's case that her step-mother-in-law was staying along with the Applicant, who was indulging in the said business. Whereas the evidence as collected in the form of statements of Sangita Raju Kamble, Sultana Asif Shaikh,

Rashida Nazir Shaikh and Sayed Harun Sayed Ibrahim Sayed indicates that the Applicant was dealing in ganja trade. The Applicant's husband is already in jail in connection with similar offence. Insofar as the Applicant is concerned, there is already registered a case for the same offence, though for possessing small quantity of contraband weighing about 18 Kgs. It, therefore, follows that the Applicant has indulged in offence even while on bail in connection with the previous offence. This reason is also good reason to sustain the conclusion reached by the lower Court. In the circumstances, I see no reason to interfere. Dismissed.